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REDACTED – FOR PUBLIC INSPECTION

July 1, 2011

VIA COURIER

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street S.W.
Washington, DC 20534

FILED/ACCEPTED

JUL - 1 2011

Federal Communications Commission
Office of the Secretary

Ms. Lynne Hewitt Engledow
Pricing Policy Division, Wireline Competition Bureau
Federal Communications Commission
445 12th Street S.W.
Washington, DC 20534

Re: In the Matter of Developing a Unified Intercarrier Compensation Regime, et al.,
CC Docket No. 01-92, WC Docket Nos. 05-337, 07-135, and 10-90, and GN
Docket No. 09-51

Dear Ms. Dortch and Ms. Hewitt Engledow:

At the request of the staff of the Federal Communications Commission, Gila River Telecommunications, Inc., on behalf of itself and its affiliates (collectively, "GRTI"), hereby submit data concerning GRTI's telecommunications service's revenues and expenses as well as the number of switched access lines served by GRTI.

If you have any questions concerning the foregoing, please contact the undersigned at 202-887-4011.

Sincerely,



Tom W. Davidson, Esq.

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Docket No. 09-51

Dear Ms. Dortch and Ms. Hewitt Engledow:

At the request of the staff of the Federal Communications Commission ("Commission"), Gila River Telecommunications, Inc., on behalf of itself and its affiliates (collectively, "GRTI"), hereby submits data concerning GRTI's historical and projected telecommunications revenues and expenses as well as the number of switched access lines served by GRTI.

As discussed herein, such data consists of some of GRTI's most commercially sensitive information, the disclosure of which would place GRTI at a significant competitive disadvantage. Accordingly, GRTI has designated the data as "Confidential Information" subject to the protections of the *Protective Order* in the above-referenced docket, including the limitations on

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access to such information.¹ Consistent with the terms of that order, GRTI has clearly bracketed the portions of its filing that contain Confidential Information, and is submitting herewith two redacted copies of the filing, which do not contain Confidential Information.

In addition, GRTI also is claiming protection from disclosure for the information submitted herewith pursuant to exemption 4 of the Freedom of Information Act ("FOIA"), and the Commission's rules, and requests that such information be withheld from public inspection except as provided in the *Protective Order*.² Specifically, pursuant to the Commission's decision in *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, GC Docket No. 96-55, Report and Order, FCC 98-184, 13 FCC Rcd 24816, (rel. Aug. 4, 1998) ("*Confidential Information Order*") and in accordance with FOIA and the Commission's Rules related to public information and inspection of records, *e.g.* 47 C.F.R. §§ 0.457 and 0.459, GRTI hereby submits this request for confidential treatment of all of the information submitted herewith to the Commission.

Statement pursuant to 47 C.F.R. § 0.459(b)

(1) Identification of the specific information for which confidential treatment is sought.

All of the information bracketed below and redacted in the public version is confidential commercial information under Exemption 4 of the FOIA, 47 U.S.C. § 552(b)(4). Accordingly, pursuant to Section 0.456(a) of the Commission's Rules, GRTI requests that such information not be made routinely available for public inspection except as provided in the *Protective Order* in the above-referenced docket. The information includes, *inter alia*, information regarding GRTI's historical and projected telecommunications revenues and expenses as well as the number of switched access lines served by GRTI.

(2) Identification of the Commission proceeding in which the information was submitted or a description of the circumstances giving rise to the submission.

The information is being provided to the Commission at the request of Commission staff for inclusion in the record in the proceeding referenced in the caption of this letter request.

¹ *In the Matter of Developing a Unified Intercarrier Compensation Regime, et al.*, CC Docket 01-92, WC Docket No. 05-337, 07-135 and 10-90, and GN Docket No. 09-51, Protective Order, 25 FCC Rcd 13160 (Chief, WCB 2010) ("*Protective Order*").

² 5 U.S.C. § 552(b)(4); 47 C.F.R. § 0.457(d) (exempting from disclosure "[t]rade secrets and commercial or financial information obtained from any person and privileged or confidential").

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(3) Explanation of the degree to which the information is commercial or financial, or contains a trade secret or is privileged.

The data requested by the Commission contain some of GRTI's most commercially sensitive historical and projected financial information (including information regarding its intercarrier compensation and universal service expenses and revenues), the disclosure of which could competitively harm GRTI.

(4) Explanation of the degree to which the information concerns a service that is subject to competition; and

The records being provided to the Commission involve telecommunications services provided by GRTI in competition with other carriers and service providers. Telecommunications is a highly competitive industry, and GRTI's services are subject to significant competition. The presence of such competition and the likelihood of competitive injury threatened by release of the information provided to the Commission by GRTI should compel the Commission to withhold the information from public disclosure, except as provided in the *Protective Order*. *CNA Financial Corp. v. Donovan*, 830 F.2d 1132, 1152 (D.C. Cir. 1987); *Frazee v. U.S. Forest Service*, 97 F.3d 367, 371 (9th Cir. 1996); *Gulf & Western Indus. v. U.S.*, 615 F.2d 527, 630 (D.C. Cir. 1979).

(5) Explanation of how disclosure of the information could result in substantial competitive harm.

Exemption 4 requires a federal agency to withhold from public disclosure confidential or privileged commercial and financial information of a person unless there is an overriding public interest reason requiring disclosure, and the Commission has a longstanding policy of protecting the confidential commercial information of its regulatees under FOIA Exemption 4.

Two lines of cases have evolved for determining whether agency records fall within Exemption 4. Under *Critical Mass*, commercial information that is voluntarily submitted to the Commission must be withheld from public disclosure if such information is not customarily disclosed to the public by the submitter.³ For materials not subject to *Critical Mass*, *National Parks* establishes a two part test for determining if information qualifies for withholding under Exemption 4.⁴ The first prong asks whether disclosing the information would impair the

³ *Critical Mass Energy Project v. NRC*, 975 F.2d 871, 879 (D.C. Cir. 1992).

⁴ *National Parks & Conservation Assoc. v. Morton*, 498 F.2d 765 D.C. Cir. (1974) ("*National Parks*").

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government's ability to obtain necessary information in the future. The second prong asks whether the competitive position of the person from whom the information was obtained would be impaired or substantially harmed. If the information meets the requirements of either prong, it is exempted from disclosure under Exemption 4. Whether under *Critical Mass* or *National Parks*, the information provided by GRTI falls within Exemption 4.

The data being provided to the Commission at its request are not customarily released to the public, are maintained on a confidential basis, and are not ordinarily disclosed to parties outside GRTI. Disclosure would subject GRTI to substantial competitive harm.

The data being provided to the Commission consists of information pertaining to GRTI's historical and projected telecommunications revenues and expenses, as well as the number of switched access lines served by GRTI, and thus represent confidential commercial information that should not be released under the FOIA, except as provided in the *Protective Order*. Competitors could use the confidential information to assist in targeting their service offerings and enhance their competitive positions, to the detriment of the competitive position of GRTI. See, e.g., *GC Micro Corp. v. Defense Logistics Agency*, 33 F.3d 1109 (9th Cir. 1994).

Commission precedent has clearly found this type of information to be competitively sensitive and withholdable under Exemption 4.⁵ Specifically, the Commission has recognized that competitive harm can result from the disclosure of confidential business information that gives competitors insight into a company's costs, pricing plans, market strategies, and customer identities. See *In re Pan American Satellite Corporation*, FOIA Control Nos. 85-219, 86-38, 86-41, (May 2, 1986).⁶ The protective procedures established by the Commission and other

⁵ See e.g. *In Matter of Pacific Bell Telephone Company Petition for Pricing Flexibility for Special Access and Dedicated Transport Services*, CCB/CPD No. 00-23, DA 00-2618, November 20, 2000 (supporting confidentiality for collocation data); *Local Exchange Carrier's Rates, Terms and Conditions for Expanded Interconnection Through Virtual Collocation for Special Access and Switched Transport: Southwestern Bell Telephone Company*, 13 FCC Rcd 13615 (1998) (keeping administrative operating expenses confidential because it would provide insight into business strategies); *AT&T/McCaw Merger Applications* 9 FCC Rcd 2610 (1994) (keeping confidential accounting records showing account balance information); *NAACP Legal Defense Fund on Request for Inspection of Records*, 45 RR 2d 1705 (1979) (keeping confidential records that contained employee salary information); *Mercury PCS II, LLC (Request for Inspection of Records) Omnipoint Corporation (Request for Confidential Treatment of Documents)*, FCC 00-241 (July 17, 2000) (keeping confidential marketing plans and strategy information).

⁶ Further, the Commission has ruled that not only should such data be protected, but also that information must be protected through which the competitively sensitive information can be determined. *Allnet Communications Services, Inc. Freedom of Information Act Request*, FOIA Control No. 92-149, Memorandum Opinion and Order (released August 17, 1993) at p. 3. The Commission's decision was upheld in a memorandum

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governmental agencies recognize the need to keep such information confidential to the maximum extent possible. The Commission has provided assurances that it recognizes the importance of avoiding "unnecessary disclosure of information that might put its regulates at a competitive disadvantage."⁷ Accordingly, GRTI requests that the information submitted herewith be withheld from public inspection except as provided in the *Protective Order* in the above-referenced dockets.

If you have any questions concerning the foregoing, please contact the undersigned at 202-887-4011.

Sincerely,



Tom W. Davidson, Esq.

Enclosures

opinion of the U.S. Court of Appeals for the D.C. Circuit, which affirmed a U.S. District Court decision protecting the information. *Allnet Communications Services, Inc. v. FCC*, Case No. 92-5351 (memorandum opinion issued May 27, 1994, D.C. Cir.).

⁷ *Confidential Information Order* at ¶8.

GRTI Fact Sheet

Summary of Residential Line Data

Residential Line Count:

Monthly Recurring Residential Line Charge:

(note: residential line charge includes 2 calling features)

Summary of Other Revenue

Gila River Telecommunications, Inc.
Summary of Access Revenue

6/24/2011

<u>Interstate</u>	<u>State</u>	<u>Total</u>	<u>%</u>
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Revenues			
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Gila River Telecommunications, Inc

**Comparison of Current Rules; FCC NPRM Proposals; and Alexicon Model
Alexicon, Inc.**

		Footnotes	Current Rules	FCC NRPM	Alexicon BB Plan
1	2011 Estimate				
2	2012 Estimate				
3					
4					
5	2013 Estimate				
6					
7					
8	2014 Estimate				
9					
10					
11	2015 Estimate				
12					
13					
	2011 Estimate	Footnotes	Current Rules	FCC NRPM	Alexicon BB Plan
14					
15					
16					
17					
18					
19					
20					
21					

Footnotes: